damages various sums which he spent in anticipation of the defendant making a good title to the land. This expenditure consisted of architect's fees for the plans of four houses which he intended to build on the land, the cost of loads of granite, sand and other building materials taken on to the land, the cost of erecting a bangsal, or builders' store on the site, coolie expenses, jaga wages and so forth, amounting in all to $4,816.95

The question whether this sum is recoverable depends upon whether miscellaneous items of this kind can be said to flow naturally from the breach. In the case of *Godwin v. Francis*[15] where the plaintiff claimed damages for the purchase of stock before the contract for the sale of some land was completed, Bovill C.J. said: "With respect to the last item of damages, viz., that respecting the stock purchased by the plaintiff, it seems to me that this did not naturally flow from the breach of contract; it has not been shown to my satisfaction that the purchase of stock was distinctly contemplated by the parties at the time the contract was made, and I do not think, therefore, that the plaintiff was entitled to recover under this head."

The test, therefore, to be applied in the present case is whether it was in the contemplation of the parties at the time the agreement was made that this expenditure on building operations would be incurred before the agreement was completed by the defendant making title; if it was in the contemplation of the parties, it is recoverable; if not, then the damages are too remote. It is, of course, true that this was an agreement for a building lease and clause 7 of the agreement provided that the lessee should erect houses, shops, or bungalows on the site but that is very far from saying that the parties contemplated he would start building operations before he had got a title to the land. On the contrary, there is no evidence that on the 1st June 1954 when the parties entered into this agreement, they contemplated that the purchaser would embark upon any expenditure in connection with the erection of houses or any other type of building on this site prior to the defendant making out a good title. It follows that the plaintiff was acting on his own initiative and responsibility in incurring this expenditure and therefore the loss is not one which flows naturally from the breach of the agreement. Nor does it make any difference, in my view, that after entering into the agreement on the 1st June 1954, the defendant some months later approved the plans which the plaintiff had asked an architect to prepare for the building he intended to erect on this site. The conduct, or perhaps it would be more accurate to say, the misconduct of the defendant in approving the plans between the date of the contract and the date when he repudiated it, might possibly give rise to an action in deceit but it cannot alter the effect of the contract itself. Accordingly, in my opinion, the expenditure incurred by the plaintiff in connexion with these premature building operations is too remote to be recoverable as damages for breach of the agreement of the 1st June 1954. In my view the judgment of the trial Judge should be affirmed and this appeal dismissed with costs.

**Smith J.** : —I have had the benefit of reading the judgments of my brother Judges. To the law therein stated I have nothing to add.

The question of fact to be decided is whether it was in the contemplation of the parties at the time when the contract was made that building operations could begin before the defendant granted the lease to the plaintiff. The agreement was entered into on 1st June, 1954, and contemplated the plaintiff going into immediate possession. Since clause 7 of the agreement provides for the erection of houses, etc., on the land it appears to me to have been in the contemplation of the parties that building operations might begin any time after 1st June, 1954. I am fortified in this belief because the defendant at a later date assisted the plaintiff in taking a necessary step towards building by signing building plans before submission to the Town Council for approval, a course of action consistent with an original intention to permit building forthwith.

I therefore find myself in agreement with the learned Chief Justice of the Federation and would allow the appeal to the extent appearing in his judgment with costs for the appellant as therein proposed.

*Appeal allowed.*

Solicitors: *Chong Thutt Pitt & Co.; M. Ismail.*

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## WONG THIN v. PUBLIC PROSECUTOR

[A. Cr. J. (Smith J.) October 17, 1957]

[K. L.—Criminal Appeal No. 30 of 1957]

*Societies Ordinance, 1949, ss. 14(1) & 15(2)—"Insignia"—Tattoo marks not "insignia"—Presumption—Accused's explanation.*

A tattoo mark on a person's body does not constitute an "insignia" within the meaning of section 14(1) of the Societies Ordinance, 1949. The word "insignia" must be read *ejusdem generis* with the words "books, accounts, writings, lists of members, seals, banners," etc. which are things clearly capable of being physically transferred.

Nevertheless, a tattoo mark applicable to a secret society on a person's body raises a presumption under section 114 of the Evidence Ordinance that he is a member of such a society. However, on an explanation that raises a reasonable doubt in the mind of a Magistrate an accused person is entitled to be acquitted. It is not necessary that the Court should be convinced of the truth of the explanation.

*R. P. S. Rajasooria* for the appellant.
*H. S. Ong* (Federal Counsel) for the respondent.

*Cases referred to :—*

(1) *R. v. Lim Chin Shang* (1957) M.L.J. 125.

(2) *Tan Ah Leng v. R.* (1957) M.L.J. 37.

MAGISTRATE'S CRIMINAL APPEAL.

**Smith J.** : — The appellant having claimed trial was convicted on the following charge :—

"That you on 22nd April, 1957 at about 12.15 p.m. at Bukit Bintang Road, Kuala Lumpur, in the State of Selangor, were a member of a Triad Society to wit "Ang Bin Hoey" and that you have thereby committed an offence punishable under section 15(2) of the Societies Ordinance, 28/49."

The facts of the case are not in dispute that the appellant has a Dragon Tattoo on his right shoulder and an Eagle clutching a Snake on his chest. Expert evidence was given to the effect that the dragon is the emblem of a Tiger General in the 1st Lodge of Ang Bin Hoey and that the Eagle and the Snake is the mark of members of the 5th Lodge of the Ang Bin Hoey.

The learned President called upon the appellant to make his defence being of the opinion that the tattoo marks were "insignia" within the meaning of section 14(1) of the Societies Ordinance, 1949. Section 14(1) reads as follows :—

"Where any books, accounts, writings, lists of members, seals, banners or insignia of, or relating to, or purporting to relate to, any society are found in the possession of any person, it shall be presumed, until the contrary is proved, that such person is a member of such society, and such society shall be presumed, until the contrary is proved, to be in existence at the time such books, accounts, writings, lists of members, seals, banners, or insignia are so found."

The accused's defence was that in the year 1953 wishing to be tattooed he selected these designs from the book of a roadside tattooist in Singapore. Later, coming to discover these were the marks of a Secret Society, he attempted with acid to burn off the mark on his shoulder. He was only partially successful since he was unable to bear the pain and he consequently made no effort to erase the mark on his chest.

In his grounds of judgment the learned President said "I am not satisfied with the story put up by the defence but on the other hand the Prosecution have proved its case under section 14 of the Ordinance."

It was argued first for the appellant that he should not have been called upon to enter on his defence since the tattoo marks are not insignia. The appellant's counsel drew my attention to the judgment of the learned Chief Justice of Singapore in the case of *R. v. Lim Chin Shang*[1] in which the learned Chief Justice said as follows :—

"The first point to be considered is whether a tattoo mark on a person's body has the characteristics or attributes of a chose in possession since if it is incapable of being a chose in possession, then it follows that it cannot, as a matter of law, be found in the possession of a person. A chose in possession has been described as something which is at once tangible, movable and visible, of which possession can be taken and which can properly be put in motion and transferred from place to place (2 Blackstone's Commentaries page 387)."

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"In my opinion a tattoo mark or a scar or any other distinguishing mark of a permanent or semi-permanent nature on a person's body lacks those attributes which ordinarily belong to a chose in possession and consequently if such a mark is found on a person's body, it cannot be said to have been found in the possession of that person so as to bring it within the statutory language of sub-section (1) of section 15."

The learned Deputy on the other hand drew my attention to the Penang case of *Tan Ah Leng v. R.*[2] in which tattoo marks were held to be insignia within the meaning of section 14.

I find myself in agreement with the learned Chief Justice of Singapore. In any written law a particular word *prima facie* retains the same meaning throughout. Section 14(2) of the Societies Ordinance, 1949 reads as follows :—

"Where any books, accounts, writings, lists of members, seals, banners or insignia of, or relating to any society are found in the possession of any person, it shall be further presumed, until the contrary is proved, that such person assists in the management of such society."

In that section 'insignia' in my opinion are clearly *ejusdem generis* with "books, accounts, writings, lists of members, seals, banners" are things clearly capable of being physically transferred. If tattoo marks were 'insignia' for the purpose of this sub-section we would be faced with the presumption that every person tattooed with a mark relating to a secret society must be presumed until the contrary is proved to be assisting in the management of such a society. For these reasons I agree with the learned Chief Justice.

I am, nevertheless, satisfied that the learned President was correct in calling upon the appellant for his defence since there clearly arose a presumption under section 114 of the Evidence Ordinance, 1950. I consider it to be a reasonable presumption that a person tattooed with the mark applicable to a secret society is *prima facie* a member of such a society, regard being had to the common course of human conduct.

The accused having been correctly called upon for his defence then gave his explanation in the witness box. The onus which lay on him was not to satisfy the Court of his innocence but to raise a reasonable doubt in the mind of the learned President that he was not guilty. The learned President has said that he was not satisfied with the explanation given. In this I consider that he placed the onus on the appellant too high. I therefore considered whether or not the appellant's story raised a reasonable doubt in my mind.

Part of the accused's explanation was that the work had been performed by a roadside tattooist and that he had selected the marks from a book supplied by the tattooist. It was not remarkable that

the tattooist was not called in view of the fact that this was a Kuala Lumpur case and that the tattooist was alleged to be in Singapore.

I consider it proper for me to take judicial notice of the fact that evidence has previously been given in the Courts that in Singapore there are books containing tattoo-designs some of which are applicable to secret societies — see the report of the case of *Tan Ah Leng v. R.*[2].

The tattoo marks on the accused's shoulder had been partly burnt off. This corroborated his evidence that he had become aware of the nature of the designs and had wished to remove them from his body. His explanation that he was afraid to go to the police and ask for their help in removing these marks was reasonable in view of the appellant's apparent station in society.

Although not convinced of the truth of this explanation I consider it is one which the Court was bound to accept and I accordingly acquit him.

*Appeal allowed.*

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## PUBLIC PROSECUTOR v. EU TONG SEN FINANCE CO. LTD.

[A. Cr. J. (Hepworth J.) October 10, 1957]

[J. B. — Criminal Appeal No. 22 of 1957]

*Dangerous Drugs — Raw opium — Importation — Forfeiture of vehicle used therefor — Motor car under Hire Purchase Agreement — Dangerous Drugs Ordinance, 1952, s. 30.*

This was an appeal against an Order in respect of a motor car used for the commission of an offence of importing raw opium into the Federation contrary to the Dangerous Drugs Ordinance, 1952. The car was lent to the accused by T who in turn had obtained it from the respondents under a Hire Purchase Agreement. The accused was convicted and the Court directed the Customs to issue a notice to the owner of the motor car to show cause why the car should not be forfeited in accordance with the provisions of section 30 of the Ordinance. The respondents and T appeared at the hearing in pursuance of the notice and the President ordered the car to be returned to the respondents.

On appeal by the Public Prosecutor it was argued that the Agreement between T and the respondents which purported to be a Hire Purchase Agreement was not in fact a Hire Purchase Agreement and that T had not denied that she had permitted the use of the vehicle for the purpose of carrying opium. The respondents maintained that the appellant was not entitled to look behind the Agreement and that T, the hirer, had committed a breach of cl. 5(b) of the Agreement by permitting the use of the vehicle in contravention of a Statute.

**Held:** (1) in this case there was no evidence that the offence had been committed with the knowledge, consent or connivance of T. That being so, if the Agreement was a Hire Purchase Agreement she had not committed a breach of it;

(2) if on the other hand the Agreement was not a Hire Purchase Agreement but a security for a loan it was unenforceable because it did not comply with the provisions of the Bills of Sale Enactment. In either event T was entitled to possession of the vehicle. The Order of the President was therefore wrong.

*Case referred to:—*

(1) *Public Prosecutor v. Patani Motors* (1957) M.L.J. 129.

MAGISTRATE'S CRIMINAL APPEAL.

*Babaudin bin Yaacob* (Federal Counsel) for the appellant.

*K. S. Chung* for the respondent

**Hepworth J.:** — On the 25th May, 1957, one Goh Say Chee was convicted in the Sessions Court, Johore Bahru, of importing into the Federation in a motor car some 105 lbs. 2 ozs. of raw opium, an offence under the Dangerous Drugs Ordinance, 1952, and was sentenced to two years imprisonment. At the conclusion of the case the Court directed the Customs to issue a notice to the owner of the motor car to show cause why such motor car should not be forfeited in accordance with the provisions of section 30 of the Dangerous Drugs Ordinance, 1952.

It is not clear to whom this notice was addressed as, at the subsequent inquiry, it was not produced and the record contained no copy, but nevertheless the two persons concerned, that is one Madam Tan Geok Khim and the respondent Company, the "Hirer" and the "Owners" respectively under a Hire Purchase Agreement, both appeared at the hearing. The learned President decided that the person entitled to the possession of the vehicle was the respondent Company and ordered accordingly.

From this order of the learned President the learned Deputy Public Prosecutor appealed on the ground that the learned President was wrong in law because the Agreement between Madam Tan Geok Khim and the respondent Company which purported to be a Hire Purchase Agreement was not in fact a Hire Purchase Agreement at all, and as a result in the particular circumstances of the case gave the respondents no rights in the car whatsoever. On being asked by the Court what the appellant's view of the position was if the Agreement was held to be a Hire Purchase Agreement, the learned Deputy Public Prosecutor stated that Madam Tan Geok Khim had not denied that she had permitted the use of the vehicle for the purpose of carrying opium and the evidence showed that she had at least connived at the commission of the offence. Accordingly she was not entitled to the return of the car whatever the Agreement was.

The respondents maintained that the onus placed upon them by sub-sections (2) and (3) of section 30 of the Ordinance had been satisfied when the respondents showed that there was a Hire Purchase Agreement in existence and that it was then for the appellant to show that what the respondents stated was incorrect; in other words, the onus then shifted back to th